

**BEFORE  
THE ILLINOIS COMMERCE COMMISSION**

Z-TEL COMMUNICATIONS, INC.,	)	
	)	
<i>Complainant,</i>	)	
	)	
vs.	)	Docket No. 02-0160
	)	
ILLINOIS BELL TELEPHONE COMPANY,	)	
d/b/a AMERITECH ILLINOIS,	)	
	)	
<i>Respondent.</i>	)	

**Z-TEL’S EXPEDITED MOTION FOR LEAVE TO FILE ITS  
FIRST AMENDED COMPLAINT AND TO BIFURCATE  
THE HEARINGS IN THIS MATTER**

Z-Tel, by its attorneys O’Keefe, Ashenden, Lyons and Ward, pursuant to Part 190 of the Commission’s Rules of Practice, 83 Ill.Adm.Code § 200.190, and 735 ILCS 5/2-616 request leave to file their First Amended Complaint. As described below, the proposed First Amended Complaint (attached hereto as Exhibit A) is intended to narrow the issues that are brought under Section 13-514 of the Illinois Public Utilities Act. In addition, because of the different schedules required under the Illinois Public Utilities Act, Z-Tel requests that the hearings to be held on March 25, 2002 relate to the issues raised in Count I of the First Amended Complaint, a claim brought under Section 13-514 of the Act. Z-Tel states as follows in support of its Motion.

**THE LEAVE TO FILE THE FIRST AMENDED COMPLAINT SHOULD BE GRANTED**

1. On February 22, 2002 Z-Tel filed its initial complaint against Ameritech. In that Complaint, Z-Tel has alleged two counts against Ameritech stemming from

Ameritech's failure to deliver timely and accurate line loss notification to Z-Tel. Count I of the Complaint alleged that Ameritech actions are a violation of Section 13-514 of the Illinois Public Utilities Act ("PUA"). Count II alleged that Ameritech's actions are a breach of the parties' interconnection agreement. Z-Tel further requested the Commission enter an emergency order enjoining Ameritech from engaging in any Winback or direct marketing efforts to Z-Tel's residential or small business customers until such time as Ameritech provides identical Line Loss Notification to Z-Tel as it provides to its own retail operations. On February 27, 2002, the Commission entered an order granting Z-Tel's request for emergency relief in part.

2. Ameritech has moved to dismiss Count II, asserting that the current complaint is only brought under Section 13-515 of Illinois Public Utilities Act (the procedural section relating to Complaints brought under Section 13-514.)

3. The attached First Amended Complaint retains the allegations contained in the initial complaint, modifies the procedural basis supporting the claims in Count II, and adds a Count III alleging that Ameritech's unlawful actions violate Sections 9-241, 9-250, 9-251, 9-252, 9-252.1, 9-253, 10-101, 10-108, 13-514 and 13-801 of the Illinois Public Utilities Act.

4. Section 2-616 of the Illinois Code of Civil Procedure reads in pertinent part:

***At any time before final judgment***, amendments may be allowed on just and reasonable terms . . . changing the cause of action or defense or adding new causes of action or defenses . . . which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim.

735 ILCS 5/2-616(a) (emphasis added).

5. The Illinois Supreme Court has held that under Section 2-616, the right to amend is very broad. *In re Hoover*, (1993), 155 Ill. 2d 402, 416; 615 N.E.2d 736. The Supreme Court has interpreted the "just and reasonable terms" language in Section 2-616(a) as "'requiring the trial court to permit amendment if it will further the ends of justice.' [Citation.]" *Id.* See also, *Loyola Academy v. S & S Roof Maintenance, Inc.*, (1992), 146 Ill. 2d 263, 272-273.

6. The First Amended Complaint will narrow the issues that are brought under Section 13-514 of the Illinois Public Utilities Act. Under the PUA, claims arising out of Section 13-514 must commence within 30 days of filing the complaint. 220 ILCS 5/13-515(d)(7). For those complaints arising out of the traditional article IX and X provisions, no such time limitation exists other than the requirement that the Commission enter an order within one year. As explained below, due to the ongoing nature of the violations, it is administratively efficient to bifurcate the proceeding. Granting leave to file the First Amended Complaint allows for such a bifurcation to take place. Thus granting this Motion will further the ends of justice.

**THE MOTION FOR BIFURCATION OF ISSUES SHOULD BE GRANTED.**

7. Under the terms of the Public Utilities Act, the Commission may address issues raised in the context of a complaint in a bifurcated manner. Specifically, Section 10-108 of the Act provides that a:

Complaint may be made by the Commission, of its own motion or by any person or corporation . . . by petition or complaint in writing, setting forth any act or things done or omitted to be done in violation, or claimed to be in violation, of any provision of this Act, or of any order or rule of the Commission. In the discretion of the Commission, *matters presented by one complaint may be ordered separated*, and matters upon which complaint may be founded may be joined. *No objection shall be sustained to a separation merely because the matters separated are*

***under the ownership, control or management of the same persons or corporation.***

220 ILCS 5/10-108.

8. Z-Tel seeks leave to have the issues raised in this proceeding separated into a two-phase process. The Phase I will address the questions raised in Count I of the First Amended Complaint that pertain to the Section 13-514 claim. Namely, as demonstrated in the First Amended Complaint's requests for relief under Count I, the outcome of Phase I would be an order determining, *inter alia*:

- a. whether Ameritech's failure to provide timely and accurate line loss data is a violation of Section 9-250, 13-801, 13-514(2) 13-514(5), 13-514(6), 13-514(8), 13-514(9) and 13-514(11) of the Illinois Public Utilities Act;
- b. whether the Commission should enter an order declaring that Ameritech discriminates in the provision of Line Loss information to its competitors;
- c. whether the Commission should enter an order prohibiting Ameritech from sending Winback marketing material to Z-Tel's residential or small business customers until such time as Ameritech provides identical Line Loss Notification to Z-Tel as it provides to its own retail operations;
- d. whether the Commission should enter an order compelling Ameritech to indemnify Z-Tel against any claim brought by former Z-Tel customers that were billed by Z-Tel after terminating their local service as a result of Ameritech's failure to provision Line Loss information;
- e. whether the Commission should order Ameritech to conduct a complete accounting, at its own expense, of the charges that have been assessed against Z-Tel for purchasing UNEs, switched access and reciprocal compensation; and
- f. whether the Commission should impose a penalty against Ameritech, order Ameritech to reimburse Z-Tel and the Commission for costs incurred in this proceeding;

9. Phase II will address the Count II and III claims, which are raised under Sections of the PUA where the only time limit placed upon those matters is the one-year deadline for final Commission action.

10. It is administratively more efficient to address only those issues contained in Count I of the First Amended Complaint in the initial phase of this complaint process. For instance, Z-Tel has shown that Ameritech's failure to provide timely and accurate line loss data has a substantial and harmful impact on Z-Tel and is a violation of numerous sections of the PUA and the parties' interconnection agreement. Z-Tel believes the evidence will show that Ameritech's inability to provide timely and accurate line loss data is of a continuing nature. Z-Tel also believes the evidence will demonstrate that Ameritech's improper submission of invoices to Z-Tel for charges related to customer accounts that have left Z-Tel is of a continuing nature. Due to the ongoing nature of the violations alleged in the First Amended Complaint (and the initial Complaint), it may not be possible to calculate Z-Tel's damages within the 30-day timeframe contemplated under Section 13-515. However, granting the Motion for Leave to Bifurcate the Hearing on this Matter will allow for the Section 13-514 issues to be addressed while still allowing the parties to create a full and complete record upon which the Commission can determine the validity of the Count II and III claims.

11. In addition, because of the different schedules required under the Illinois Public Utilities Act, Z-Tel requests that the hearings to be held on March 25, 2002 relate to the issues raised in Count I of the First Amended Complaint, a claim brought under Section 13-514 of the Act.

WHEREFORE, for the reasons stated above, Z-Tel Communications, Inc. respectfully requests that this Commission grant this Expedited Motion for Leave to File Z-Tel's First Amended Complaint and to Bifurcate the Hearings in this Matter into a two-phase proceeding as explained herein.

Respectfully submitted,

Z-TEL COMMUNICATIONS, INC.



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By one of its attorneys

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